IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 6916 of 2003

Arihant Electricals .. Petitioner
V/s.
Commissioner of Central Excise, Mumbai .. Respondent

Mr. G.N. Salunke for the Petitioner
Mr. S.M. Shah with Mr. Y.R. Mishra for the Respondent

CORAM : S. RADHAKRISHNAN &
J.H. BHATIA, JJ.
DATED : 29.06.2005.

P.C.:-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the Petitioner and the learned counsel for the Respondent. The learned counsel for the Respondent waives service. By consent taken up for hearing forthwith.

2. By this Petition, the Petitioner is challenging the order dated 8.11.2002 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, refusing to condone 97 days delay in the filing the above Appeal.

3. We have perused the original application for condonation of delay, wherein it is stated that the father and son were the only two partners of the Petitioner firm and it appears that son was looking after the business and he has stated that he suddenly had an attack of slip disk during the third week of April 2002, however the Appeal could have been filed upto first week of May, 2002. As he was totally

bed-ridden and he was unable to move and was advised complete bed rest, the Appeal could not be filed. Medical certificate issued in that behalf by Dr. B.L. Sundarka, certifying that the said Mr. Kushal Raj, who is the son, was under his treatment since long is annexed. The certificate is dated 17.8.2002.

4. Having regard to the facts and circumstances of the case and also in view of the fact that the Petitioner ought to have been given a fair opportunity of the Appeal being heard on merits and in the larger interests of justice, we quash and set aside the impugned order dated 8.11.2002 passed by Customs, Excise & Gold (Control) Appellate Tribunal, refusing to condone the aforesaid delay. We find that the Petitioner has made out sufficient cause to condone the delay. There is no case of negligence, want of bonafide or inaction on the part of the Petitioner, hence Rule is made absolute in terms of prayer clause (b).

(S. RADHAKRISHNAN, J.)

(J.H. BHATIA, J.)